

MAY 26 1993

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 93-94
	)	
SCRIPPS HOWARD BROADCASTING	)	File No. BRCT-910603KX
COMPANY	)	
	)	
For Renewal of License	)	
Station WMAR-TV	)	
Baltimore, Maryland	)	
	)	
and	)	
	)	
FOUR JACKS BROADCASTING, INC.	)	File No. BPCT-910903KE
	)	
For Construction Permit for a	)	
New Television Facility on	)	
Channel 2 at Baltimore,	)	
Maryland	)	

To: Administrative Law Judge  
 Richard L. Sippel

**MASS MEDIA BUREAU'S OPPOSITION TO PETITION  
 TO ENLARGE ISSUES AGAINST SCRIPPS HOWARD BROADCASTING COMPANY**


1. On May 13, 1993, Four Jacks Broadcasting, Inc. ("Four Jacks") filed a petition to enlarge issues against Scripps Howard Broadcasting Company ("SHBC"). Four Jacks seeks addition of anticompetitive and discriminatory practices, misrepresentation/ lack of candor and abuse of process issues against SHBC. The Mass Media Bureau submits the following opposition to Four Jacks' petition.

2. In support of its request for an anticompetitive practices issue, Four Jacks initially cites a special jury verdict in Pacific West Cable Co. v. City of Sacramento, 672 F.

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Supp. 1322 (E.D. Cal. 1987) ("Pacwest"). There the jury reached two special verdicts finding the defendant, the City of Sacramento, guilty of engaging in a "sham" to promote the making of cash payments and "in kind" services by the company ultimately selected to provide cable television to the Sacramento market. The verdict also concluded that the "sham" process was designed to obtain cash contributions for elected public officials. Four Jacks contends that since a cable subsidiary of SHBC was the company referred to in the verdict, the adjudication of



letters from the Mass Media Bureau dated March 4, 1988, and February 22, 1991, concerning the same allegations. In the February 22, 1991, letter, the Chief, Television Branch, stated that the Commission staff had "fully considered the matters set forth ... and conclude[d] that there are no substantial and material questions of fact that would warrant any further inquiry." To the extent that Four Jacks alleges additional anticompetitive conduct, none of it has been adjudicated and thus need not be reported or considered.

4. Four Jacks also alleges that a subsidiary of SHBC engaged in anticompetitive practices with respect to the operation of a cable franchise in Glasgow, Kentucky. The litigation involving these matters was ultimately settled among the parties thus vacating any adverse adjudicatory rulings. Accordingly, there is no reportable judgment as to anticompetitive practices.

5. In summary, the Bureau opposes any further inquiry with respect to SHBC's alleged anticompetitive practices, failure to report law suits and alleged misrepresentation for failing to report judgments or jury findings. Simply stated, SHBC was not a defendant in the proceeding and no further inquiry is warranted with respect to the Pacwest matter. Moreover, since there was no adverse judgement against SHBC, SHBC was under no obligation to report the Pacwest verdicts, and SHBC's failure to do so does not

demonstrate a lack of candor or constitute a misrepresentation. Similarly, since the Kentucky matter involving SBHC's cable subsidiary was settled and thus did not result in an ultimate adjudication as to violation of anticompetitive or antitrust laws, no further consideration of the matter is warranted. See Character Qualifications, 102 FCC 2d 1179, 1201 (1986).

6. Four Jacks seeks addition of an employment discrimination issue based upon a U.S. District Court decision which found that SHBC's Memphis, Tennessee television station engaged in racial discrimination against a black employee. See Lowery v. WMC-TV, 658 F. Supp. 1240 (W.D. Tenn. 1987). While the decision was being appealed, the station and employee reached a settlement and the lower court decision was vacated. See Lowery v. WMC-TV, 661 F. Supp. 65 (W.D. Tenn 1987). Four Jacks argues that the trial judge's findings of discrimination require

conduct which occurred prior to 1981. The Commission has imposed a ten year limitation, "even as to consideration of past conduct indicating a 'flagrant disregard of the Commission's regulations and policies .... '" See Character Qualifications 102 FCC 2d at 1229. Thus, although the Bureau opposes discrimination in all of its manifestations, addition of an employment discrimination issue is not warranted.

8. Four Jacks alleges that SHBC has abused the Commission's processes by attempting to impede the prosecution of applications filed by Four Jacks and its principals. According to Four Jacks, SHBC filed unwarranted pleadings to obstruct various pro forma transactions by Four Jacks' principals and attempted to interfere with Four Jacks' prospective use of its antenna tower by questioning whether the tower could support Four Jacks' antenna and by "stirring up local government opposition to Four Jacks' tower proposal." Four Jacks contends that SHBC's conduct was abusive with the principal motive of impeding Four Jacks' mutually exclusive application.

9. There is a heavy burden in raising strike application or related abuse of process issues because, although such matters are cause for serious concern, the Commission's statutory scheme calls for adversarial participation by interested parties. The Commission looks, inter alia, to the reasonableness of the conduct in determining whether the conduct constituted an abuse

of the Commission's processes. Cf. Viacom International, Inc., 63 RR 2d 290, 295 (1978). Here, SHBC attempted to raise both procedural and substantive questions concerning Four Jacks' principals' so-called pro-forma assignment and related applications. It appears that SHBC correctly alleged that the pro-forma 316 applications were incomplete. Consequently, SHBC's pleadings raised a legitimate question, even though SHBC's arguments were ultimately found to be insufficient to warrant rescission of the grant of the assignment applications. (See April 10, 1992 letter from Chief, Video Services Division, Ex. 16 to Four Jacks' petition to enlarge). Accordingly, SHBC's conduct was not abusive.

10. Similarly, it appears that SHBC had a reasonable basis for inquiry with respect to Four Jacks' antenna site, and that its conduct in this matter did not abuse the Commission's processes. Even assuming that SHBC instigated WPOC's efforts to correct the tower height, this would not constitute an abuse of process. The tower height, as recorded in the Commission's data base, was incorrect ever since the top-mounted Channel 45 antenna was removed. The Bureau does not believe it was an abuse of process to seek to correct information in the Commission's data

base.<sup>1</sup> Furthermore, SHBC's questions to public officials about

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<sup>1</sup> Significantly, the Hearing Designation Order, 8 FCC Rcd 2326 (V.S.D. 1993) noted that the record height for the specified tower is only 368.5 meters due to the removal of the Channel 45 antenna


the tower were not unreasonable in view of the fact that an engineering study commissioned by SHBC raised questions about the structural ability of the tower to hold Four Jacks' proposed top-mounted antenna.

11. Based on the foregoing, the Bureau opposes all of the issues requested by Four Jacks.

Respectfully submitted,  
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from the tower in 1987. The HDO thus specified an issue because it was not clear that the FAA had approved the proposed tower at 381 meters.

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